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No. 79-1124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

PEOPLE OF THE STATE OF ILLINOIS, et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents Illinois Central Gulf Railroad Company ("ICG") and American Rail Heritage, Ltd., d.b.a Crab Orchard and Egyptian Railroad ("COE") submit this Brief in Opposition to the Petition for a writ of certiorari filed by Petitioners, People of the State of Illinois (William J. Scott, Attorney General), Illinois Commerce Commission, United Transportation Union (John W. McGinness and George B. Lee), Brotherhood of Locomotive Engineers (Donald L. Lindsey), and Brotherhood of Maintenance of Way Employees (Winston C. Harbicht).

The Petition herein embraces two decisions of the United States Court of Appeals for the Seventh Circuit, the "Prairie Trunk" case (Appendix A to the petition) and the "Crab Orchard and Egyptian" case (Appendix B to the petition). The respondents herein are directly interested in the "Crab Orchard and Egyptian" case, and only indirectly in the "Prairie Trunk" case. The primary focus of this brief is therefore on the former case.

OPINIONS BELOW

The Opinion of the Court of Appeals in the "Crab Orchard and Egyptian" case is found in Appendix B to the petition, pp. 21a-30a. The decision of the Interstate Commerce Commission in the same case is found in Appendix D to the petition, pp. 75a-88a.

JURISDICTION

The jurisdiction of the Supreme Court is conferred by 28 U.S.C. 1254(1), following the entry of the opinion and orders of the United States Court of Appeals for the Seventh Circuit.

QUESTIONS PRESENTED

1. Whether the Interstate Commerce Commission properly held that COE could acquire and operate an individual line segment formerly operated by ICG under section 1(18) of the Interstate Commerce Act (49 U.S.C. 1(18), recodified 49 U.S.C. 10901 ff.).

2. Whether the Interstate Commerce Commission afforded proper labor protective conditions to the employees of the carrier relinquishing the operation of the line segment.

STATEMENT OF THE CASE

The proceeding before the Interstate Commerce Commission in the "Crab Orchard and Egyptian" case involved two applications; one by Illinois Central Gulf (ICG) in Docket AB-43 (Sub. No. 27) to abandon its line between Seely and Mande, Illinois, a distance of 14.5 miles; and the second by American Rail Heritage (COE) in Finance Docket 28360 to acquire and operate a portion of the ICG line sought to be abandoned, a distance of 8.53 miles, between Ordill and Mande. All points are in Williamson County, Illinois.

ICG is a major railroad operating in the middle west and middle south, and it has been subject to regulation by the Interstate Commerce Commission since the inception of that agency in 1887. Prior to the applications herein, COE had not engaged in interstate commerce. It had, for a time prior thereto, operated a tourist steam excursion train in Williamson County, Illinois. The tourist train operation was local in nature and did not involve any interstate transportation of persons or property.

The Interstate Commerce Commission held a hearing in Marion, Illinois (Williamson County) and granted the COE application to acquire and operate the 8.53 miles of line, in and near Marion. This application was strongly supported by numerous local interest, including the City

of Marion and local shippers and receivers of freight. The application was opposed only by the petitioners here—the Illinois Attorney General, the Illinois Commerce Commission, and several labor union officials of the unions, representing ICG's scheduled employees. The Commission dismissed ICG's abandonment application as to the 8.53 miles between Ordill and Mande, and granted the ICG application to abandon the remaining 5.97 miles between Seely and Ordill (see sketch map, petition, p. 27a).

The acquisition authority granted to COE was restrained by the Court of Appeals for a short time, but the Court subsequently vacated its restraining order. The acquisition of the 8.53-mile segment was consummated in mid-1979. The Commission has recently issued a certificate permitting ICG to abandon the remaining line segment, which is effective on May 9, 1980. ICG is in the process of filing tariff schedules to effect the abandonment on that date. Actually, there has been no train operations over this segment for several years because of an embargo for track safety problems. In approving this entire transaction, the Commission provided generous labor protective conditions for ICG employees who might be adversely affected by the granting of the applications. For all practical purposes, therefore, the entire transaction is complete, and there is no remaining controversy to be resolved.

ARGUMENT

I.

THE COMMISSION AND THE COURT OF APPEALS PROPERLY CONSIDERED THE APPLICATION OF SECTIONS 1(18) AND 5(2) OF THE INTERSTATE COMMERCE ACT.

Sections 5(2) and 1(18) of the Interstate Commerce Act (prior to the recent recodification) were enacted as part of the Transportation Act of 1920. The latter Act gave to the Interstate Commerce Commission sweeping regulatory power over the financial structure of railroads. The 1920 Act regulated for the first time railroad mergers and unifications, extensions and abandonments of lines, the issuance of securities, divisions of revenues, and other matters affecting in the ultimate sense the cost to the carriers and to the public of railroad service. Section 5(2) of the Interstate Commerce Act focused on unifications and mergers of rail carriers. *County of Marin v. United States*, 356 U.S. 412 (1958); *St. Joe Paper Co. v. Atlantic Coast Line Railroad Co.*, 347 U.S. 298 (1954). Sections 1(18)-1(22) of the Act regulated the construction, acquisition, and abandonment of individual lines of railroad. *Colorado v. United States*, 271 U.S. 153 (1926). The recodified Interstate Commerce Act retains this distinction: Sections 10901 ff. (49 U.S.C.) deal with construction, acquisition, and abandonment of individual lines of railroad, while Section 11343 deals with mergers, unifications, joint operations and trackage rights (see petition, pp. 3-5).

The Interstate Commerce Commission has for many years considered applications to acquire and operate small segments of railroads under Section 1(18). The leading precedents are *Okmulgee Northern Ry. Co.*

Abandonment, 320 I.C.C. 637 (1964) and *Iowa Terminal R. Co. Acquisition and Operation*, 312 I.C.C. 546 (1961). The history of this interpretation was discussed by the Commission at some length in its decision (petition, pp. 78a-80a). It was also discussed in *Prairie Trunk Railway-Acquisition and Operation*, 348 I.C.C. 832 (1977); see petition, p. 60a. The *Prairie Trunk* decision is consistent with a long history of statutory interpretation and thus breaks no new ground. It was thus consistent for the Commission in the "Crab Orchard and Egyptian" case to rely upon its more recent *Prairie Trunk* decision as well as the older precedents in granting COE's application to acquire and operate a short segment of rail line in Williamson County, Illinois. The Court of Appeals for the Seventh Circuit recognized and approved the Commission's interpretation and application of these statutory provisions. A long and settled statutory construction by the agency charged with the administration of the law is entitled to great weight: *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Board of Trade*, 412 U.S. 800 (1973).

II.

THE IMPOSITION OF LABOR PROTECTIVE CONDITIONS SATISFIES THE REAL INTERESTS OF PETITIONERS.

A further issue is that of labor protection. The former Section 5(2) of the Interstate Commerce Act mandated the protection of labor in the Commission's order granting any approvals under that section; former Section 1(18) did not mandate labor protection, but the Commission has routinely and consistently applied labor protective conditions in such cases. In the "Crab Orchard and Egyptian" case, the Commission applied protective conditions to all ICG employees who might be adversely

affected by the abandonment and acquisition authorized in the proceeding (petition, pp. 85a-86a). Similarly, labor protective conditions were imposed in the "Prairie Trunk" case (petition, pp. 61a-62a). Thus, the employees of ICG (Crab Orchard and Egyptian case) and of B&O (Prairie Trunk case) actually received the protective conditions that would have been mandatory had the applications been considered under Section 5(2). Thus, the labor protection point is a moot one. Since most of the petitioners here are labor union officials, the Court should deem their interests in this matter satisfied by the protective conditions afforded by the Commission. The interests of the Illinois Attorney General and of the Illinois Commerce Commission have appeared throughout this proceeding identical to those of the labor union officials, as they took positions contrary to the expressed views of the City of Marion and of the local affected shippers and receivers of freight in and near Marion. Thus, the interests of all petitioners in obtaining labor protective conditions have in fact been satisfied by the orders of the Commission.